

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENN ENVIRONMENT, INC and
CLEAN AIR COUNCIL

Plaintiffs,

ALLEGHENY COUNTY
HEALTH DEPARTMENT

Civil Action No. 2:19-cv-00484-MJH

Plaintiff-Intervenor,

v.

UNITED STATES STEEL
CORPORATION,

Defendant.

**MOTION TO INTERVENE BY ALLEGHENY COUNTY HEALTH DEPARTMENT
UNDER FEDERAL RULE OF CIVIL PROCEDURE 24**

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, the Allegheny County Health Department (“ACHD” or the “Department” or “Proposed Intervenor”) hereby moves for leave to intervene in this action in order to (a) assert the claims set forth in the proposed Complaint in Intervention (attached as Exhibit 1). In support of this motion, the Department states:

1. This action was initiated by Plaintiffs PennEnvironment, Inc. (“PennEnvironment”) and Clean Air Council (“CCC”) (collectively “Plaintiffs”) against Defendant United States Steel Corporation (“U.S. Steel”) pursuant to the citizen’s suit provisions of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(a).1

2. The action seeks injunctive relief and civil penalties against Defendant for violations of the CAA, Pennsylvania’s federally-approved State Implementation Plan (“SIP”), and Title V Operating Permits at Defendant’s integrated steel making facilities located along the Monongahela River valley, in Allegheny County.

3. The ACHD seeks to intervene in this action to effectuate a global settlement among the existing parties to this action and Proposed Intervenor.

4. Rule 24(b)(2) provides “[o]n timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party’s claim or defense is based on: (A) a statute or executive order administered by the officer or agency; or (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.” Fed. R.Civ. P. 24(b)(2).

5. Plaintiffs’ claims are based on the Clean Air Act, the Pennsylvania SIP, and U.S. Steel’s Title V Operating Permits for its Mon-Valley facilities. The Clean Air Act is implemented through a federal-state partnership where federal standards are often implemented and administered by individual states. The Allegheny County portion of Pennsylvania’s SIP, which is a plan designed to achieve and maintain the National Ambient Air Quality Standards in Allegheny County, has been approved by the United States Environmental Protection Agency (“EPA”) and is therefore enforceable by the United States. *See e.g.*, 42 U.S.C. § 7410 (SIP program) and 40 C.F.R. Section 2020(c)(2). (Allegheny County SIP regulations). Similarly, ACHD is the permitting authority for federal Title V permit purposes in Allegheny County, Pennsylvania. *See, e.g.*, 42 U.S.C. §§ 7661-7661f (Title V program) and 64 Fed. Reg. 51112-15 (November 1, 2001) (EPA approval).

6. Finally, Rule 24(b)(1)(B) provides that “[o]n timely motion, the court may permit anyone to intervene who... (B) has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B).

7. Plaintiffs’ claims are based in part on the December 24, 2018 fire at U.S. Steel’s Clairton Coke Works, the fact that the fire caused U.S. Steel to divert raw coke oven gas away from its desulfurization process, a diversion that led to violations to its Title V permits across its three Mon Valley Works facilities, and the claims sought to be brought by Proposed Intervenors include claims brought by Plaintiffs in this action. Therefore, there are common questions of law and fact between Proposed Intervenor’s claims in intervention and Plaintiffs’ pending claims.

8. The ACHD has conferred with the current parties to this action (PennEnvironment, Clean Air Council and U.S. Steel). Plaintiffs have indicated that they do not oppose this Motion to Intervene. Defendant has not indicated whether it opposes this Motion to Intervene.

9. The timeliness of a motion to intervene is “determined by the totality of the circumstances.” *United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1181 (3rd Cir. 1994). The factors to consider include (a) the stage of the proceeding, (b) the prejudice that delay may cause the parties, and (c) the reason for the delay. *Mountain Top Condo. Ass’n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 369 (3rd Cir. 1995).

10. This motion is timely because Defendant U.S. Steel has yet filed an Answer or raised objections to Plaintiffs’ Complaint as filed, there are no objections to intervention, and there would be no prejudice to any current party. Indeed, intervention could facilitate a faster and more complete resolution.

11. Attached hereto as Exhibit 1 is the ACHD’s proposed Complaint in Intervention.

12. Attached hereto as Exhibit 2 is a proposed order granting ACHD's requested relief.

For the foregoing reasons, the Allegheny County Health Department respectfully moves pursuant to Rule 24 to intervene in this action.

Respectfully submitted,

FOR THE ALLEGHENY COUNTY
HEALTH DEPARTMENT

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